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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/561,173	12/16/2005	Philippe Msika	065691-0423	1955
22428 7590 12/10/2008 FOLEY AND LARDNER LLP SUITE 500 3000 K STREET NW WASHINGTON, DC 20007				
EXAMINER JAVANMARD, SAHAR				
ART UNIT		PAPER NUMBER		
1617				
MAIL DATE		DELIVERY MODE		
12/10/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/561,173

Applicant(s)

MSIKA ET AL.

Examiner

SAHAR JAVANMARD

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15, 18-27 and 29-33 is/are pending in the application.
- 4a) Of the above claim(s) 15, 22-27, 30 and 31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-21, 29, 32 and 33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Status of the Application

This Office Action is in response to applicant's arguments filed on September 12, 2008. Claim(s) 15, 18-27, and 29-33 are pending. Claim(s) 18-21 and 29 have been amended. Claim(s) 32 and 33 are newly added. Claim(s) 18-21, 29, 32, and 33 are examined herein.

Response to Arguments

In view of Applicant's amendments, the 1112-1st rejection of claims 14, 16, 19-21, 28 and 29 is hereby withdrawn.

Applicant's arguments with respect to the 103(a) rejection of claims 14, 16-21, 28 and 29 as being unpatentable over Rajadhyaksha et al. (US Patent No. 4,876,249) in view of Wamper (US Patent No. 2,368,075) has been fully considered and is persuasive, said rejection is hereby withdrawn.

The following new rejections are set forth in the office action below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 18-21, 29, 32, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rajadhyaksha et al. (US Patent No. 4,876,249) in view of Bissett (US Patent No. 5,962,482).

Rajadhyaksha teaches compositions for carrying physiologically active agents through body membranes such as skin and for retaining these agents in the body tissues and further relates to a method of administering systemically active agents through the skin or other body membranes of humans and animals, utilizing a transdermal device or formulation, containing an effective, non-toxic amount of a membrane penetration enhancer having the structural formula I (column 3, lines 23-32), namely OX100 (column 15, example 11).

Rajadhyaksha teaches that agents for topical applications include among a list of agents, vasodilators and collagen softening agents (column 12, lines 10-20).

Further Rajadhyaksha teaches that the amount of oxazoline for enhancing percutaneous absorption topically ranges between 0.01 to about 10% preferably 0.1 to 5% by weight of the composition.

Rajadhyaksha does not teach the oxazolines as promoting slimming.

Bissett teaches a method for combating cellulite or reducing localized fatty excesses which comprise administering to a person having cellulite or localized fatty excesses a body slimming amount of a composition containing niacinamide (column 1, lines 10-15).

Bissett further teaches that niacinamide stimulates epidermal cells and thickens the tissue to overcome the thinning of the epidermis that is associated with cellulite. These compounds are also vasoactive (stimulate blood flow) and thus would improve the reduction in microvascularization associated with cellulite. Additionally, niacinamide stimulates metabolism in skin cells in general (e.g., epidermis, dermis, subcutaneous fat) which would increase cellular production of the enzymes for turnover or removal of the agglomerations of fatty tissue and/or proteoglycans (column 2, line 63-column 3, line 8).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have employed the oxazolines in topical applications with vasodilators as taught by Rajadhyaksha and employed this formulation with niacinamide as a method of promoting slimming. As taught by Bissett, niacinamide is vasoactive and stimulates blood flow, thus microvascularization is reduced and the increase in cellular production

of the enzymes for turnover or removal of the agglomerations of fatty tissue and/or proteoglycans would promote slimming.

Conclusion

Claims 18-21, 29, 32, and 33 are not allowed.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SAHAR JAVANMARD whose telephone number is (571) 270-3280. The examiner can normally be reached on 8 AM-5 PM MON-FRI (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

/S. J./

Examiner, Art Unit 1617

/SREENI PADMANABHAN/

Supervisory Patent Examiner, Art Unit 1617